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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

16 FORD MOTOR CREDIT COMPANY,) No. C 07-03301 JW
17 LLC, a Delaware Limited Liability)
Company,

18 Plaintiff.

19

[PROPOSED] ORDER FOR WRIT OF POSSESSION

20 LEWIS FAMILY ENTERPRISES, INC.,) Hearing Date: August 1, 2007
21 dba BOB LEWIS LINCOLN) Time: 11:00 a.m.
22 MERCURY, a California corporation,) Courtroom: 8
and STEVEN ROBERT LEWIS, an) individual,)

23 Defendants

The Hon. James Ware

Hearing Date: August 1.

Hearing Date: August 1,
Time: 11:00 a.m.

Time: 11
Courtroom: 8

The Hon. James Ware

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ORDER FOR WRIT OF POSSESSION
Ford Credit v. Lewis Family Enterprises, Inc.

1 The Application of Ford Motor Credit Company, LLC a Delaware limited
2 liability company (“Ford Credit”) for the issuance of an order for writ of possession
3 and for injunctive relief came on for hearing before the United States District Court
4 for the Northern District of California, on August 1, 2007, at 11:00 a.m. before the
5 Honorable James Ware.

6 The Court, having reviewed the application of Ford Credit for writ of
7 possession and a preliminary injunctive relief, the supporting declarations and
8 memorandum of points and authorities and the complaint on file in this action, and
9 finding that no opposition has been filed, finds that Ford Credit has established that
10 it is entitled to the issuance of a Writ of Possession and has established the probable
11 validity that there is an immediate danger that the vehicles identified on the
12 attached Exhibit “A”, the other personal property described in the attached Exhibit
13 “B” and the proceeds from the sale of any such vehicle or other personal property
14 (collectively the “Collateral”), may become unavailable to levy and may become
15 substantially impaired in value, and

16 GOOD CAUSE APPEARING, THEREFOR,

17 IT IS HEREBY ORDERED that:

18 1. Defendant, Lewis Family Enterprises, Inc., dba Bob Lewis Lincoln
19 Mercury (“Bob Lewis Lincoln Mercury”) has received timely and proper notice of
20 this hearing on Plaintiff Ford Credit’s Application for Writ of Possession and
21 Injunctive Relief under the Court’s Local Rules.

22 2. Ford Credit has established the probable validity of its security interest
23 in, and claim to possession of, the vehicles identified on the attached Exhibit “A”
24 and all of Bob Lewis Lincoln Mercury’s furniture, fixtures, machinery, supplies and
25 other equipment, all motor vehicles, tractors, trailers, implements, service parts and
26 accessories and other inventory of every kind, all accounts, contract rights, chattel
27 paper and general intangibles as described in the attached Exhibit “B”, and that

1 Defendant Bob Lewis Lincoln Mercury is in default on its loan obligations owing
2 to Ford Credit as set forth in the moving papers.

3 3. Ford Credit has established that the Collateral is located at 911 Capitol
4 Expressway Auto Mall, San Jose, California (the “Dealership”).

5 4. The Clerk of this Court shall issue a writ of possession as provided in
6 California Code of Civil Procedure section 512.010, made applicable by Federal
7 Rule of Civil Procedure 64.

8 5. The levying officer within whose jurisdiction the Collateral, or some
9 part thereof, is located, is authorized to execute the Writ of Possession and levy on
10 the Collateral in either of the following manners as directed by Ford Credit:

11 a. The levying officer may seize the Collateral and retain custody
12 of it in the manner provided by California Code of Civil Procedure sections
13 514.010 - 514.050; or

14 b. The levying officer within whose jurisdiction the Collateral, or
15 some part thereof, is located may maintain the peace while Ford Credit, its agents
16 and employees take and maintain possession of the Collateral in the manner
17 provided by California Code of Civil Procedure sections 514.010 - 514.050.

18 c. Upon delivery of the Collateral to Ford Credit, the United States
19 Marshal Service shall be held harmless as to the transport, storage, and maintenance
20 of the Collateral.

21 d. Ford Credit is to store the Collateral in a reasonable manner and
22 either Ford Credit or the storage facility shall carry sufficient insurance to protect
23 the Collateral from loss prior to its sale or disposition. Ford Credit shall dispose of
24 the Collateral in the manner provided under the California Uniform Commercial
25 Code.

26 6. Ford Credit has established that it has a security interest in all accounts
27 of Bob Lewis Lincoln Mercury. Ford Credit is authorized under this Order and the
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1 Writ of Possession to take possession of all Collateral in the deposit accounts of
2 Bob Lewis Lincoln Mercury wherever located. Ford Credit is authorized to have
3 the United States Marshal serve a financial institution levy upon any financial
4 institution with possession of Collateral for turnover of the Collateral in the
5 Accounts to Ford Credit through the United States Marshal in the manner provided
6 under California Code of Civil Procedure section 704.080. Bob Lewis Lincoln
7 Mercury shall issue no checks, drafts or other form of withdrawals from the
8 Accounts from the date of the issuance of this Order except to make payment to
9 Ford Credit.

10 7. Bob Lewis Lincoln Mercury shall deliver and turn over the Collateral
11 to Ford Credit as provided by California Code of Civil Procedure section 512.070.
12 Ford Credit will then hold the Collateral for not less than 10 days in order to allow
13 Bob Lewis Lincoln Mercury an opportunity to obtain redelivery of the Collateral
14 pursuant to Cal. Code of Civ. Proc. §514.030.

15 8. Ford Credit is authorized to use a single USM-285 form which will
16 refer to a list including all motor vehicles comprising the Collateral and identifying
17 each motor vehicle specifically by make, model, year, and vehicle identification
18 number. The levying officer is directed to accept such form in full compliance with
19 its procedures requiring the use of form USM-285.

20 9. The writ of possession shall issue forthwith. The Court waives any
21 filing or posting of an undertaking or bond by Ford Credit as the Court is permitted
22 and authorized to do under California Code of Civil Procedure section 515.010(b).

23 10. The written undertaking required by Bob Lewis Lincoln Mercury for
24 redelivery or to stay delivery shall be in the amount of \$2,586,154.15.

25 11. The Clerk of this Court shall attach a copy of this Order to the writ of
26 possession.

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1 12. The levying officer may enter the following private places at any time
 2 or times, using any necessary reasonable force, whether the premises are occupied
 3 or unoccupied, to take possession of the Property or some part thereof: 911 Capitol
 4 Expressway Auto Mall, San Jose, California.

5 13. Ford Credit's representatives shall, if the levying officer so requests,
 6 accompany the levying officer to the business premises described above, to review
 7 and examine Bob Lewis Lincoln Mercury's books and records relating to the
 8 vehicles and parts constituting the Collateral in order to determine the status,
 9 location and time and date of return of any Collateral. Ford Credit's representative
 10 is authorized to remain at the Dealership at all times until all the Collateral is
 11 removed from the Dealership.

12 14. The levying officer is authorized to remain on Bob Lewis Lincoln
 13 Mercury's business premises at all times until all the Collateral is removed from the
 14 Dealership.

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 16 **IT IS FURTHER ORDERED THAT:**

17 15. Bob Lewis Lincoln Mercury, its agents, employees, and all persons
 18 acting for it or on its behalf, are hereby immediately restrained and enjoined from
 19 transferring any interest in the Collateral by lease, sale, pledge, gift, or grant of
 20 security interest or otherwise disposing of, encumbering, secreting or transferring
 21 possession of the Collateral, in any manner which would prevent, hinder, or delay
 22 the levying officer from taking possession of the Collateral.

23 16. Defendant Bob Lewis Lincoln Mercury, its agents, employees and
 24 anyone acting on its behalf, are enjoined and restrained from transferring any
 25 interest by sale, pledge, gift or grant of security interest or otherwise disposing of,
 26 or encumbering the Collateral identified on the attached Exhibits "A" and "B".

27 17. In the event that Bob Lewis Lincoln Mercury ceases to conduct
 28 business, Ford Credit is authorized to have all mail to be delivered to Bob Lewis
 10872/0122/632011.2

1 Lincoln Mercury redirected to a post office box that Ford Credit will maintain for
2 the purpose of receiving Bob Lewis Lincoln Mercury's mail. Ford Credit will be
3 authorized to open the mail to Bob Lewis Lincoln Mercury and to take possession
4 of all money paid to Bob Lewis Lincoln Mercury and to endorse all checks, money
5 orders, and other forms of payment to Ford Credit and to apply the funds to the
6 contract balances owing by Bob Lewis Lincoln Mercury to Ford Credit. Bob Lewis
7 Lincoln Mercury, its officers, or its appointed employees are agents are permitted to
8 be present when Ford Credit opens any such redirected mail. The parties shall
9 cooperate in scheduling a reasonable time for the opening of the redirected mail.

10 18. Defendants are ORDERED to hold all proceeds of sales of the
11 vehicles indentified on Exhibit A in a trust account, to be distributed only upon
12 further order of the Court.

13 19. This Order shall remain in effect until modified by further order of
14 this Court, or modified by written agreement signed by Plaintiff Ford Credit and
15 Defendant Bob Lewis Lincoln Mercury filed with and approved by order of this
16 Court.

17 DATED: _____.

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20 JUDGE _____
21 UNITED STATES DISTRICT COURT
22 FOR THE NORTHERN DISTRICT OF
23 CALIFORNIA
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